

CHAPTER 15

THE LAUTENBERG AMENDMENT

Outline of Instruction

I. REFERENCES.

- A. Gun Control Act of 1968, 18 U.S.C. §921-928 (Supp. 1997).
- B. The “Lautenberg Amendment” to the Brady Handgun Violence Prevention Act, P.L. 104-208, Title VI, section 658, 110 Stat. 3009.371; codified at 18 U.S.C. §922(d)(9), §922(g)(9), §925(a)(1); (effective 30 Sept. 1996).
- C. Department of Defense Implementation:
 - 1. Memorandum, Assistant Secretary of Defense, Force Management Policy, Subject: Interim DoD Policy on Domestic Violence Amendment to the Gun Control Act (22 Oct 1997).
 - 2. Message, 151100Z Jan 98, Headquarters, Dep’t of Army, DAPE-MPE, subject: HQDA Message on Interim Implementation of Lautenberg Amendment (15 Jan. 1998). Copy at Appendix 1.
 - 3. Message, 311108Z Oct 97, Headquarters, Dep’t of Army, DAJA-LA, subject: Interim Guidance on Lautenberg Amendment Issues (31 Oct. 1997).
 - 4. Message, 211105Z May 99, Headquarters, Dep’t of Army, DAPE-MPE, subject: HQDA Guidance on Deployment Eligibility, Assignment, and Reporting of Solders Affected by the Lautenberg Amendment. Copy at Appendix 2.
- D. JAGNet site for Lautenberg Amendment database:
<http://www.jagnet.army.mil/jagnet/lautenasgm.nsf/?Open>

II. BASIC PROVISIONS.

- A. 18 U.S.C. §922(d) prohibits the transfer of “any firearm or ammunition to any person whom you know or have reasonable cause to believe . . . has been convicted in any court of a misdemeanor crime of domestic violence.”
- B. 18 U.S.C. §922(g) prohibits “any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence . . . to receive any firearm or ammunition which has been shipped in interstate or foreign commerce.”
- C. Violations of either prohibition are punishable by 10 years confinement, \$250, 000 fine, or both. 18 U.S.C. §924(a)(2).
- D. 18 U.S.C. §925 formerly exempted “any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof.” This “federal exemption” has been eliminated for individuals “convicted in any court of a misdemeanor crime of domestic violence.”

III. ELEMENTS OF A “MISDEMEANOR CRIME OF DOMESTIC VIOLENCE,” 18 U.S.C. §921(A)(33).

- A. The person was convicted of a crime classified as a misdemeanor in the jurisdiction where the conviction was entered.
- B. The offense had as an element the use or attempted use of physical force, or threatened use of a deadly weapon.
- C. The offender was at the time of the offense:
 - A current or former spouse, parent or guardian of the victim;
 - A person with whom the victim shared a child in common;
 - A person who was cohabiting with or has cohabited with the victim as a spouse, parent or guardian of the victim;
 - A person who was similarly situated to a spouse, parent, or guardian of victim.

- D. The convicted offender was represented by counsel, or knowingly and intelligently waived the right to counsel.
- E. If entitled to have the case tried by jury, the case was actually tried by a jury or the person knowingly and intelligently waived the right to have the case tried by a jury.
- F. The conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense or had civil rights restored, unless the pardon, expungement, or restoration of civil rights provides that the offender may not ship, transport, possess, or receive firearms.

IV. DEP'T OF DEFENSE AND DEP'T OF ARMY RESPONSE.

- A. Interpretation.
 - 1. Conviction of a misdemeanor crime of domestic violence does not include a summary court-martial conviction or nonjudicial punishment under Article 15.
 - 2. The law does not apply to crew served weapons or major weapons systems (tanks, missiles, aircraft, etc.).
 - 3. The law applies to all other Army issue and privately owned firearms and ammunition.
 - 4. The Army policy applies worldwide (including hostile fire areas).
- B. Commander Responsibilities Under January 1998 Interim Guidance.
 - 1. Notify all soldiers that it is unlawful to possess firearms and ammunition if they have a conviction of a misdemeanor crime of domestic violence.
 - 2. Conduct local file checks to identify soldiers who may have disqualifying convictions.

3. Establish procedures to ensure compliance, to include withdrawing privately owned weapons from unit arms rooms. Such procedures should permit soldiers to sell or transfer personal firearms to authorized individuals.
4. Soldiers who have or may have a qualifying conviction should be referred to a legal assistance attorney.
5. Reassign to duties that do not require possession of firearms or ammunition.
6. May initiate adverse administrative action against soldiers solely on the basis of inability to possess a weapon only if the conviction was entered after 30 September 1996 and the soldier has been given a reasonable amount of time to obtain a pardon or other relief.
7. May initiate adverse action on the basis of the underlying misconduct or for civil conviction regardless of when the misconduct or conviction occurred.

C. Commander's Responsibilities Under May 1999 Message

1. Soldiers with disqualifying conviction or *reasonable cause to believe* have a disqualifying conviction are non-deployable or assignable for:
 - a. Mission requiring Firearms (No Curtailment)
 - b. Overseas assignments (No Curtailment)
 - c. TOE/MTOE Units (New Soldiers Only)
 - d. Service Schools
 - e. Limited Leadership
2. Enlisted Retention

- a. Extension for one year only (does not apply to bared soldiers).
 - b. No reenlistment.
 - c. Accept voluntary separation under Chapter 5-3.
- 3. Reporting:
 - a. USR Code (other) beginning 15 July.
 - b. Central reporting, wait.
- 4. National Guard and Reserves report Semi-annually starting 1 Aug. 1999.

D. Legal Assistance.

- 1. Personnel who believe they may have a disqualifying conviction will be referred to legal assistance. Legal assistance attorneys will explain the law and potential criminal and administrative consequences of a disqualifying conviction.
- 2. LA attorneys will assist soldiers, to the extent possible, in obtaining pardons, expungement of records, proof of deferred adjudication, or restoration of civil rights, which would render Lautenberg inapplicable to the client.
- 3. The scope of legal assistance involving civilian criminal matters is limited by AR 27-3, &3-6j, and clients may need referral to civilian defense counsel.
- 4. Clients needing advice on criminal law or administrative separation matters should be referred to TDS, IAW AR 27-3, &3-6g(5) & 3-8a(1).

V. CURRENT ISSUES.

A. Litigation. *Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998) *reh'g granted*, 159 F.3d 1362, *reversed*, 173 F.3d. 898 (D.C. Cir. 1999). On 28 August 1998 the court held that 18 U.S.C. §925 violates the Equal Protection Clause, because there is no rational basis for prohibiting possession of firearms by officers with misdemeanor domestic violence convictions, while permitting possession by officers with domestic violence felony convictions. On 16 April 1999 the court reversed itself and held that the amendment does not violate the Equal Protection Clause.

B. The Current Policy Debate.

1. Do not expand policy to include felony convictions of domestic violence.
2. Rescind overseas applicability (absent definitive judicial ruling).
3. Provide guidance on foreign convictions.
4. Require certification only for personnel with unsupervised access to weapons and ammunition.
5. Ensure consistent application for military, civilian and contract personnel.
6. Oppose creation of non-weapons-bearing MOSs.

C. Legislative Initiatives.

VI. CONCLUSION.